

PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on May 31, 2001
[Approved on June 27, 2001]

Prepared By: Terry Wood

Meeting Location: CERO, Worcester, MA.

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1. **Call to Order:** Co-chair Debra Stake called the meeting to 12:45 p.m. Also present were Gail Batchelder, Janine Commerford, Kirk Franklin, Gretchen Latowsky, Robert Luhrs, and Debbie Phillips. Staff members present were Allan Fierce, Terry Wood, Joe DeCola, Brian Quinlan, and Ed Unser. Also present were Wesley Stimpson, a member of the LSP Association; Christophe Henry; Robert Ritchie; Maria Pinaud, Tom Potter, Patricia Donahue, Frank Sciannameo, Paul Spano, Jim Moody, Cathy Wanat, and Drew Hoyt of DEP.
 2. **Announcements:** None.
 3. **Previous Minutes:** The draft minutes of the meeting held on April 30, 2001 were approved with minor edits.
 4. **Old Business:**
 - A. **Status of Complaint Review Teams**

At Ms. Stake's request, the chair of each CRT reported on progress made during the last month.
 - B. **Review Draft Policy Regarding Not Providing CRT Reports to Recused Board Members**

After discussion, a motion was made and seconded to accept a policy stating as follows: "Any Board member recused from a disciplinary case shall not be provided a copy of the Complaint Review Team's investigatory report ("CRT report") regarding that case prior to the issuance of a final decision by the Board. Any Board member may review a CRT report regarding a case from which s/he has been recused only after a final decision has been reached."

The motion passed unanimously.
 - C. **Review Cover Letter from Ms. Pinaud to Mr. Fierce**

The Committee reviewed a cover letter from Ms. Pinaud to Mr. Fierce that accompanied the requests for admonition recently submitted by DEP to the Board. Because a copy of the cover letter would be sent to the LSP along with the admonition request, Board members suggested edits to the letter to clarify that the NOAF that is the basis of the admonition request could later become part of a DEP complaint against the LSP. Ms. Stake and Mr. Fierce also suggested that Ms. Pinaud add a

declarative sentence stating that DEP was requesting that the Board either issue an admonition or form a CRT. Ms. Pinaud stated that the letter had already gone through several levels of review within DEP but that she thought she agreed with Ms. Stake's and Mr. Fierce's suggested edit.

D. Review Draft Letter to LSP with Admonition Request and Draft Admonition Letter

After discussion, the Committee approved both documents with suggested edits. Mr. Luhrs stated that the Board staff should also prepare draft letters for the following situations: when the Board votes not to issue an admonition and when the Board votes to form a CRT to investigate the allegations in an admonition request. Mr. Fierce stated that he would prepare drafts of these letters for next month's meeting.

E. Review Draft Flow Chart re: Admonition Process

The Committee discussed the draft flow chart and suggested several edits. After discussion, a motion was made and seconded that the flow chart be edited to state that anyone, and not just DEP, could request that the Board issue an admonition. The motion passed unanimously. Mr. Fierce stated that he would prepare an edited version of the flow chart for next month's meeting.

Mr. Stimpson stated that the LSPA wanted to know whether the Board had considered a sunset provision allowing an admonition to be removed from an LSP's record after a certain period of time. Mr. Fierce stated that, because of the public records law, it would be difficult for a state agency to remove something from an LSP's record. Mr. Stimpson asked if the Board would consider an admonition issued some time ago as part of a pattern. Mr. Fierce stated that, if an admonition were old, it would not likely be used to show a pattern. Mr. Stimpson asked if there would ever be a situation where DEP would submit an admonition request without also having issued some documentation to the PRP regarding the violations. Ms. Pinaud stated that DEP should have first issued some notice to the PRP. Mr. Stimpson asked the Board's thoughts regarding how information about the admonitions issued by the Board could get to the practicing community. Mr. Fierce pointed out that he had written an upcoming article for the LSPA news regarding the admonition process. Mr. Stimpson stated that the LSPA's loss prevention committee sees the admonition process as a means to convey practical information to the LSP community. He stated that the Board might want to consider making information about the admonitions it issues available on the Board's Web site as well sending updates regarding recently issued admonitions to the LSPA news on a regular basis. He added that the loss prevention committee would be interested in seeing information regarding both the number of admonitions issued as well as the specific violations cited.

Ms. Latowsky asked whether an article regarding the Board's admonition process could be printed in DEP's newsletter. The consensus of the Committee was that the issue would be tabled for further discussion during the Board meeting.

5. **New Business:**

A. **Complaint 01C-001**

This complaint came from the DEP. DEP alleges, among other things, that an RAO filed by the LSP failed to support a determination that 'no significant risk' existed at the site.

Ms. Wood stated that the LSP submitted a very lengthy response to the complaint, including numerous attachments, and requested that the entire response be given to the Board to review. Ms. Wood stated that, after discussion with Ms. Stake and Mr. Roberts, it was decided that only the letter submitted to the Board by the LSP, and not the various attachments, would be provided to Board members because of the effort that would be required to redact the entire response. Ms. Wood and Ms. Stake both also stated that the entire response could be redacted and presented to the Committee if any Board member so requested prior to making a decision whether a CRT should be formed. No Board member present indicated a desire to see the entire response.

A motion was made and seconded that a CRT be formed to investigate the complaint and make recommendations to the Board. The motion passed unanimously. The CRT will be composed of Ms. Commerford and Mr. Feldman provided he is not recused. If Mr. Feldman is recused, Mr. Luhrs will take his place.

B. **Review Draft Policy Regarding Staff Responses to Questions regarding Complaints**

After discussion, the Committee accepted the language of the draft policy with edits. Ms. Wood stated that she would present an edited version at next month's meeting.

6. **Future Meeting:** The Committee agreed to meet on June 27 at Raytheon in Lexington at 12:30 p.m. The Committee also agreed to meet on July 27 at SERO in Lakeville at 10:30 a.m.
7. **Adjournment:** The meeting was adjourned at approximately 2:15 p.m.